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SUPREME COURT, U.S.

(3)

No. 06-1215

In the

Supreme Court of the United States

October Term, 2006

Clover Park School District No. 400 of Pierce County, Washington,
Petitioner,

v.

Washington State Board of Education; Puget Sound Educational Service District Regional Committee on School District Organization; and Stellacoom School District No. 1 of Pierce County, Washington,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION II

PETITIONER'S REPLY BRIEF

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Petitioner Clover Park School District (Clover Park) respectfully submits this reply to respondent Steilacoom School District's (Steilacoom's) April 5, 2007 Brief in Opposition (hereafter, Resp. Brief).

I. Equal Protection and Peremptory Judge Removal

Regarding Steilacoom's motion and affidavit of prejudice against the original African-American trial court judge, Steilacoom understates the extent to which it evaded and "trashed" Clover Park's constitutional arguments, before both the Regional Committee and State Board, as Clover Park sought to protect its high-minority, high-poverty student body from the undisputed racially segregative effects, and undisputed economic damage, of Steilacoom's proposed territory transfer.

As noted in Clover Park's Petition, and contrary to Steilacoom's indication that there was "no Record evidence to support Clover Park's assertion that the transfer would exacerbate existing racial or economic divisions," Resp. Brief at 12, the *only* evidence related to pupil segregation before the Regional Committee was Clover Park's uncontested statements,[1] submitted in advance of the hearings in which Steilacoom could have disagreed, that the proposed transfer would exacerbate racial and socioeconomic isolation.

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[1] "The proposed transfer would increase the existing economic, social and racial imbalance between the two districts." AR 345. "It is not seriously disputed, and is apparent both from the record and from readily-available official information...[that] the proposal would exacerbate rather than improve existing patters of student ethnic distribution (note, e.g., that Clover Park's minority student population is substantially higher than Steilacoom's, that Clover Park has the second-highest African-American student percentage of all districts in the state...)". AR 110-14.

Steilacoom neither addressed nor contested this obvious effect of the proposed transfer before the Regional Committee, except to assert—once Clover Park was represented by counsel for the third and final Regional Committee session on March 3, 2004, and had repeated Clover Park's earlier information that the transfer would be segregative[2]—that Clover Park's raising of that and other constitutional considerations was "baloney." And only before the State Board of Education did Steilacoom first contend, in the course of labeling Clover Park's constitutional claims as "bravado," that Clover Park's argument against the worsened racial segregation caused by the territory transfer should fail because no direct evidence of segregative purpose had been presented to the Regional Committee.

Respondents are familiar with the 1983 Washington trial court decision[3] that racially segregated schools are

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[2] Clover Park was not represented by counsel at the first two of the Regional Committee's sessions held on November 5 and 25, 2003. The Regional Committee did not discuss constitutional issues in reaching its preliminary decision at the meeting of November 25, and did not address them at its March 3, 2004 meeting even after they had been explicitly raised by counsel for Clover Park. Counsel for the Regional Committee steadfastly declined, just as the Regional Committee had, to even use the word "constitution" in any of the Regional Committee's papers filed before the courts below. (The Regional Committee's hearing was still pending as of March 3, 2004. RCW 28A.315.205(2), App. HH, p. 309a *infra*. Otherwise, the Regional Committee's preliminary determination of November 25, 2003 was not converted to written findings and conclusions in timely fashion, and the State Board would have had to refer the matter back to the Regional Committee to rehear the matter, RCW 28A.315.205(5)(a)(2), *id.*, p. 311a *infra*.)

[3] *Seattle School District, et al. v. State*, Thurston County Superior Court No. 81-2-1713-1, Findings of Fact 17.1, 17.2, 17.3, Conclusions of Law 54 (September 7, 1983): "A racially segregated education is inadequate to equip students, especially minority students, with basic educational skills and with the ability to participate effectively in our open political

unconstitutional under the Washington Constitution without regard to the cause of the segregation. Mere months before the Regional Committee's apparent closed-door decision not to consider this and other constitutional defects of the territory transfer, and a year before the State Board of Education's decision that it would not consider constitutional issues because its role was so narrowly limited compared with normal administrative hearings, the Washington Supreme Court commented on "Washington's unique approach to the State's paramount duty to provide a general and uniform basic education to all children regardless of race, color, caste, or sex," *Parents Involved in Community Schools v. Seattle School District No. 1*, 149 Wash. 2d 660, 72 P.3d 151, 162 (2003). The court made clear that the issue of whether discriminatory purpose is a necessary element of a state constitutional violation in the context of public school racial segregation remains open:

> [I]f it is determined that in a contemporary setting de facto segregated schools cannot provide children with the educational opportunities necessary to equip them for their role as citizens, then the state constitution would most certainly mandate integrated schools.

Id., 72 P.3d at 162-63.

Clover Park reminded the State Board of those cases, AR 100-01, and it was in that context that

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system and in the labor market. Compared to their counterparts from segregated schools, minority students from desegregated schools experience significant gains in basic skills achievement, advance further through school, more frequently obtain college degrees, have significantly higher employment rates and income, and participate more actively and effectively in the political process. Desegregation significantly improves racial attitudes and behavior of both minority and majority students. Segregated schools are prohibited by Article IX, Section 1 of the Constitution."

Steilacoom characterized Clover Park's constitutional input as "bravado" and first argued its "no segregative purpose" defense to the segregative effects of the proposal.

Clover Park noted Steilacoom's persistence in placing pejorative labels on Clover Park's segregation and school funding arguments while failing to respond to them, AR 92 (prehearing brief to State Board). But Steilacoom still did not respond to the substance of those contentions. AR 3-88 (transcript of June 18, 2004 State Board hearing).

After the State Board declined to consider Clover Park's constitutional issues, saying those issues were "best addressed by the courts," Pet. App. W at 124a, Steilacoom's contemptuous non-responses were about to be placed before Judge Grant.

Clover Park has never maintained that it knows Steilacoom's sole reason for its motion and affidavit of prejudice was that Judge Grant is African-American. Rather, Clover Park has consistently asserted that race was among the reasons for Steilacoom's peremptory action, and that there has been no proper evidentiary indication the removal would have occurred even in absence of the racial consideration. *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 270 n. 21 (1977). Steilacoom's continued insistence that it had non-racial reasons, even if true, does not end the inquiry.

Steilacoom's contention that the filer of its motion and affidavit had no racial motivation at all for removal of Judge Grant is less plausible than the alternative. After it ridiculed Clover Park's attempts to have the constitution considered in a case involving claims of pupil segregation and funding inequality affecting a high-minority, high-poverty school system, after it claimed before the State

Board that only federal and not state constitutional concepts are applicable, and after the State Board refused to consider constitutional matters, saying they were for the courts, Steilacoom's potential downside before Judge Grant was obvious enough that its motion and affidavit were no surprise.

Steilacoom could have acknowledged what would occur to most normal citizens—namely, that ridiculing Clover Park's arguments, yet not responding to them in spite of their apparent substance, might especially offend an African-American judge—while still asserting under oath that other, non-racial considerations predominated and would have led to the same decision even in absence of the racial one.

It is true, of course, that applying the Equal Protection Clause to peremptory removal of judges cannot be done in exactly the same way as with peremptory removal of jurors. It is equally true that failure to apply the Equal Protection Clause at all would permit even openly-racist reasons for removing a judge to escape scrutiny altogether. Situations of openly-stated racial motivation are bound to be rare, and the sorts of patterns that may be discerned with jury selection are not available with single-judge peremptory challenges. For these reasons, the totality of this case's factual basis for questioning a party's peremptory judge removal; the party's shifting explanations for its reasons; and the party's failure to directly refute, in response to an explicit invitation, through the sworn statement of the person filing the peremptory removal, that race was a factor in its decision (or to acknowledge that it was, but then testify that the same decision would have been made in absence of the racial consideration), is enough to demonstrate a race-based reason for the peremptory removal.

II. Due Process, Discovery, and the Opportunity to Present Claims and Address Defenses

The State Board, taking the narrowest view possible of its purview, Pet. App. W at 124a, chose not to address constitutional considerations at all, indicating they were "best addressed by the courts," *id.* at 126a. Steilacoom now asserts the courts may not address the constitutional issues—not even the "no segregative purpose" defense first raised by Steilacoom after the Regional Committee's decision--because they have already been considered in the "APA process" and consideration of further evidence developed outside the "record" is not appropriate.

Steilacoom further argues that Clover Park's assertion of a due process right to normal civil discovery, regarding (a) its Open Public Meetings Act (OPMA) claims concerning the decisionmaking process of the Regional Committee, (b) its constitutional claims concerning the racial and economic effects of the territory transfer at issue, and (c) Steilacoom's defense of lack of segregative purpose, should fail because Clover Park could have developed its proof regarding the OPMA issue during the Regional Committee hearing, because the state APA limits new evidence, and because Clover Park did not make an "offer of proof" as to what its requested discovery would reveal. Resp. Brief at 17-22.

As noted in the Petition, Clover Park separately pleaded its OPMA and constitutional claims, *i.e.*, Clover Park claimed that the results of the Regional Committee/State Board process were invalid because the Regional Committee violated the OPMA, RCW Ch. 42.30, and because the proposed transfer, if effected, would violate the Washington Constitution's equal protection and

education provisions, WASH. CONST. art. I, §12 & art. IX, §§ 1, 2.

The reasons are rather straightforward for Clover Park's refusal to be confined to the "administrative record."

First, as indicated in its decision, the State Board viewed its role as reviewing the record from the Regional Committee only in light of the factors set forth in RCW 28A.315.205(5)(a)(ii), App. HH, p. 311a *infra*. The process followed in this matter is a far cry from the full-dress administrative processes in Washington's APA, RCW Ch. 34.05, and in Steilacoom's cited authorities. *See* Pet. App. F at 38a.

Thus, the reason for Clover Park's separate and independent pleading of its OPMA, constitutional, and other claims, Pet. App. at 123a, was to guarantee that its full case—matters that were considered in the Regional Committee and State Board processes, as well as matters that were not—would be heard. Clover Park's joinder of its "administrative" and "non-administrative" claims was for the sole purpose (there can be no other[4]) of assuring that its OPMA and constitutional claims received the same scrutiny as if they had been filed in a separate lawsuit.

Under Steilacoom's theory, the State Board can state expressly that it is not considering constitutional matters because they are "best addressed by the courts," and then those same constitutional issues may be turned away by the courts on the grounds that they were not developed in the administrative process and no further

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[4] This, of course, is why Clover Park sought court review of the decision to transfer territory as a "Petitioner/Plaintiff," Pet. App. V at 115a, and not simply as a petitioner seeking review of an administrative record. *See also* Pet. App. G at 44a.

review is available—even where all the "administrative" actors declined urgings that they consider those issues.[5]

Second, Clover Park lacked meaningful opportunity to develop its OPMA claims in the administrative process. Doing so would have required filing a separate lawsuit, even though there was and is no reason to suppose an OPMA claim could not be made as a separate claim in Clover Park's appeal. WASH. R. CIV. P. 18; *cf.* FED. R. CIV. P. 18.

No amount of "public records" requests, Resp. Brief at 21, could substitute for interrogatories, requests for admission, and requests for production directed to, as well as depositions of, members of the Regional Committee, or of its executive (who indicated by declaration his unfounded belief that only substantive, and not procedural, matters were covered by the OPMA, CP 369. *Cf.* RCW Ch. 42.30).[6]

Third, as to properly-pleaded OPMA and constitutional claims, one normally develops evidence through discovery and then attempts to offer it to the

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[5] The court of appeals was not quite so absolute, indicating that the State Board should not ignore constitutional claims if the decision complained of was motivated by "flagrant racism," but, because "Clover Park has not provided evidence of blatant racism, this is not an issue." Pet. App. B at 18a. This rather high bar for triggering constitutional scrutiny has no parallel elsewhere in the law, and is all the more striking where normal civil discovery on independently-pleaded constitutional claims has not been permitted.

[6] If respondents believed Clover Park's separately-pleaded, non-administrative claims were not properly joined to the claims made in Clover Park's appeal from the decisions of the Regional Committee and State Board, they could have and should have moved for their severance rather than stipulating to consolidation of all pending claims.

tribunal. If the evidence is not admitted, an offer of proof may be made, but is not always required, to protect the record on appeal. WASH. R. EVID. 103; *cf.* FED. R. EVID. 103.

Here, Clover Park was not permitted to develop the evidence, and thus could not make indications of proof beyond the then-known facts—all of which were placed directly into the record, not objected to, and not excluded from the evidence. Clover Park provided evidence of the information it had--the Regional Committee executive's indication under oath of his belief that "procedural matters" were not covered by the law; the inexplicable changes in the content of the Regional Committee's November 25, 2003 oral decision and its written March 25, 2004 decision; the apparent pre-understanding, based on acknowledged pre-hearing communication among Regional Committee members, to ignore Clover Park's constitutional claims at the March 3 meeting; and the Regional Committee's delaying tactics as to pending Clover Park records requests directed toward the OPMA issue. And Clover Park explained why it needed discovery to develop the additional evidence. Pet. Apps. F & G at 35-46a.

Similarly, as to its constitutional equal protection, school desegregation, and school funding claims and Steilacoom's asserted "no segregative purpose" defense, Clover Park fully explained its theories, and the need for discovery to prepare to present its proof, Pet. App. F & G at 35-46a; CP 318-65, 382-86, & 394-97.

Moreover, the day after the trial court's orders to quash Clover Park's discovery—which orders permitted Clover Park to apply for permission to conduct discovery—Clover Park moved for such permission, Pet. App. GG at 288-90a, and placed much of its written

discovery before the court for examination, CP 460-569. That motion was not heard before the trial court granted Steilacoom's motion for summary judgment, ruling that Clover Park could not go outside the "administrative record" even as to its claims that the transfer would violate the Washington Constitution. The trial court's order granting summary judgment did not even mention Clover Park's OPMA claim, and did not address the effect of Clover Park's separately pleaded claims. Pet. App. C at 21-29a.

III. Conclusion

Based on the foregoing, Clover Park submits the Petition for Certiorari should be granted.

RESPECTFULLY SUBMITTED this 18th day of April, 2007.

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APPENDIX

APPENDIX HH – RCW CH. 28A.315 AS IT EXISTED AT TIME OF REGIONAL COMMITTEE HEARING

Chapter 28A.315 RCW
ORGANIZATION AND REORGANIZATION OF SCHOOL DISTRICTS

RCW 28A.315.005 Governance structure. (1) Under the constitutional framework and the laws of the state of Washington, the governance structure for the state's public common school system is comprised of the following bodies: The legislature, the governor, the superintendent of public instruction, the state board of education, the educational service district boards of directors, and local school district boards of directors. The respective policy and administrative roles of each body are determined by the state Constitution and statutes.

(2) Local school districts are political subdivisions of the state and the organization of such districts, including the powers, duties, and boundaries thereof, may be altered or abolished by laws of the state of Washington.

RCW 28A.315.015 Purpose—Policy. (1) It is the purpose of this chapter to:

(a) Incorporate into a single, comprehensive, school district organization law all essential provisions governing:

(i) The formation and establishment of new school districts;

(ii) The alteration of the boundaries of existing districts; and

(iii) The adjustment of the assets and liabilities of school districts when changes are made under this chapter; and

(b) Establish methods and procedures whereby changes in the school district system may be brought about by the people concerned and affected.

(2) It is the state's policy that decisions on proposed changes in school district organization should be made, whenever possible, by negotiated agreement between the affected school districts. If the districts cannot agree, the decision shall be made by the regional committees on school district organization, based on the committees' best judgment, taking into consideration the following factors and factors under RCW 28A.315.205:

(a) A balance of local petition requests and the needs of the statewide community at large in a manner that advances the best interest of public education in the affected school districts and communities, the educational service district, and the state;

(b) Responsibly serving all of the affected citizens and students by contributing to logical service boundaries and recognizing a changing economic pattern within the educational service districts of the state;

(c) Enhancing the educational opportunities of pupils in the territory by reducing existing disparities among the affected school districts' ability to provide operating and capital funds through an equitable adjustment of the assets and liabilities of the affected districts;

(d) Promoting a wiser use of public funds through improvement in the school district system of the educational service districts and the state; and

(e) Other criteria or considerations as may be established in rule by the state board of education.

(3) It is neither the intent nor purpose of this chapter to apply to organizational changes and the procedure therefor relating to capital fund aid by nonhigh school districts as provided for in chapter 28A.540 RCW.

RCW 28A.315.025 Definitions. As used in this chapter:

(1) "Change in the organization and extent of school districts" means the formation and establishment of new school districts, the dissolution of existing school districts, the alteration of the boundaries of existing school districts, or all of them.

(2) "Regional committee" means the regional committee on school district organization created by this chapter.

(3) "State board" means the state board of education.

(4) "School district" means the territory under the jurisdiction of a single governing board designated and referred to as the board of directors.

(5) "Educational service district superintendent" means the educational service district superintendent as provided for in RCW 28A.310.170 or his or her designee.

Appendix HH

RCW 28A.315.035 Organization of school districts. A school district shall be organized in form and manner as hereinafter in this chapter provided, and shall be known as . . . . . (insert here the name of the district) School District No. . . . ., ... county, state of Washington: PROVIDED, That all school districts now existing as shown by the records of the educational service district superintendent are hereby recognized as legally organized districts: PROVIDED FURTHER, That all school districts existing on April 25, 1969 as shown by the records of the county or intermediate district superintendents are hereby recognized as legally organized districts.

RCW 28A.315.045 Reorganization. (1) A new school district may be formed comprising contiguous territory lying in either a single county or in two or more counties. The new district may comprise:

(a) Two or more whole school districts;

(b) Parts of two or more school districts; and/or

(c) Territory that is not a part of any school district if such territory is contiguous to the district to which it is transferred.

(2) The boundaries of existing school districts may be altered:

(a) By the transfer of territory from one district to another district;

(b) By the consolidation of one or more school districts with one or more school districts; or

(c) By the dissolution and annexation to a district of a part or all of one or more other districts or of territory that is not a part of any school district: PROVIDED, That such territory shall be contiguous to the district to which it is transferred or annexed.

(3) Territory may be transferred or annexed to or consolidated with an existing school district without regard to county boundaries.

RCW 28A.315.055 Conflicting or incorrectly described school district boundaries. In case the boundaries of any of the school districts are conflicting or incorrectly described, the educational service district board of directors, after due notice and a public hearing, shall change, harmonize, and describe them and shall so certify, with a complete transcript of boundaries of all districts affected, such action to the state board for its approval or revision. Upon receipt of notification of state board action, the educational service district superintendent shall transmit to the county legislative authority of the county or counties in which the affected districts are located a complete transcript of the boundaries of all districts affected.

RCW 28A.315.065 District boundary changes—Submission to county auditor. (1) Any district boundary changes shall be submitted to the county auditor by the educational service district superintendent within thirty days after the changes have been approved in accordance with this chapter. The superintendent shall submit both legal descriptions and maps.

(2) Any boundary changes submitted to the county auditor after the fourth Monday in June of odd-

numbered years does not take effect until the following calendar year.

RCW 28A.315.075 Effect of 1999 c 315—Existing provisions not affected. (1) Any proposed change in school district organization initiated before July 25, 1999, shall be considered under the laws and rules in effect before July 25, 1999. Chapter 315, Laws of 1999 applies to any proposed change in school district organization initiated on or after July 25, 1999.

(2) For purposes of this section, "initiated" means the filing of a petition, the motion of a school board, or the report of an educational service district. This section does not preclude the filing of a new petition on or after July 25, 1999, where the same or a similar proposal was filed before July 25, 1999.

RCW 28A.315.085 Personnel and supplies—Reimbursement. (1) The superintendent of public instruction shall furnish to the state board and to regional commit-tees the services of employed personnel and the materials and supplies necessary to enable them to perform the duties imposed upon them by this chapter and shall reimburse the members thereof for expenses necessarily incurred by them in the performance of their duties, such reimbursement for regional committee members to be in accordance with RCW 28A.315.155, and such reimbursement for state board members to be in accordance with RCW 28A.305.120.

(2) Costs that may be incurred by an educational service district in association with school district negotiations under RCW 28A.315.195 and supporting the regional committee under

RCW 28A.315.205 shall be reimbursed by the state from such funds as are appropriated for these purposes.

RCW 28A.315.095 Regional committees—Powers and duties. The powers and duties of each regional committee are to:

(1) Hear and approve or disapprove proposals for changes in the organization and extent of school districts in the educational service districts when a hearing on a proposal has been requested under RCW 28A.315.195;

(2) Act on notices and proposals from the educational service district under RCW 28A.315.225;

(3) Make an equitable adjustment of the property and other assets and of the liabilities, including bonded indebtedness and excess tax levies as otherwise authorized under this section, as to the old school districts and the new district or districts, if any, involved in or affected by a proposed change in the organization and extent of the school districts;

(4) Make an equitable adjustment of the bonded indebtedness outstanding against any of the old and new districts whenever in its judgment such adjustment is advisable, as to all of the school districts involved in or affected by any change heretofore or hereafter effected;

(5) Provide that territory transferred from a school district by a change in the organization and extent of school districts shall either remain subject to, or be relieved of, any one or more excess tax levies that are authorized for the school district under RCW 84.52.053

before the effective date of the transfer of territory from the school district;

(6) Provide that territory transferred to a school district by a change in the organization and extent of school districts shall either be made subject to, or be relieved of, any one or more excess tax levies that are authorized for the school district under RCW 84.52.053 before the effective date of the transfer of territory to the school district;

(7) Establish the date by which a committee-approved transfer of territory shall take effect;

(8) Hold and keep a record of a public hearing or public hearings (a) on every proposal for the formation of a new school district or for the transfer from one existing district to another of any territory in which children of school age reside or for annexation of territory when the conditions set forth in *RCW 28A.315.290 or 28A.315.320 prevail; and (b) on every proposal for adjustment of the assets and of the liabilities of school districts provided for in this chapter. Three members of the regional committee or two members of the committee and the educational service district superintendent may be designated by the committee to hold any public hearing that the committee is required to hold. The regional committee shall cause notice to be given, at least ten days prior to the date appointed for any such hearing, in one or more newspapers of general circulation within the geographical boundaries of the school districts affected by the proposed change or adjustment. In addition notice may be given by radio and television, or either thereof, when in the committee's judgment the public interest will be served thereby; and

(9) Prepare and submit to the superintendent of public instruction from time to time or, upon his or her request, reports and recommendations respecting the urgency of need for school plant facilities, the kind and extent of the facilities required, and the development of improved local school administrative units and attendance areas in the case of school districts that seek state assistance in providing school plant facilities.

RCW 28A.315.105 Regional committees—Created. There is hereby created in each educational service district a committee which shall be known as the regional committee on school district organization, which committee shall be composed of not less than seven nor more than nine registered voters of the educational service district, the number to correspond with the number of board member districts established for the governance of the educational service district in which the regional committee is located. One member of the regional committee shall be elected from the registered voters of each such educational service district board member district.

RCW 28A.315.115 Regional committees—Membership limitation. Persons possessing the status of any of the following positions shall not be eligible to be a member of a regional committee: The superintendent of public instruction, a member of the state board of education, an educational service district superintendent, a member of a board of directors of a school district, a member of an educational service district board, a member of a governing board of either a private school or a private school district which conducts any grades kindergarten through twelve, officers appointed by any such governing board, and employees of a school district, an educational

service district, the office of the superintendent of public instruction, a private school, or a private school district.

RCW 28A.315.125 Regional committees—Election of members-Qualifications. The members of each regional committee shall be elected in the following manner:

(1) On or before the 25th day of September, 1994, and not later than the 25th day of September of every subsequent even-numbered year, each superintendent of an educational service district shall call an election to be held in each educational service district within which resides a member of a regional committee whose term of office expires on the second Monday of January next following, and shall give written notice thereof to each member of the board of directors of each school district in the educational service district. Such notice shall include instructions, and the rules and regulations established by the state board of education for the conduct of the election. The state board of education is hereby empowered to adopt rules pursuant to chapter 34.05 RCW which establish standards and procedures which the state board deems necessary to conduct elections pursuant to this section; to conduct run-off elections in the event an election for a position is indecisive; and to decide run-off elections which result in tie votes, in a fair and orderly manner.

(2) Candidates for membership on a regional committee shall file a declaration of candidacy with the superintendent of the educational service district wherein they reside. Declarations of candidacy may be filed by person or by mail not earlier than the 1st day of October, and not later than the 15th day of October of each even-

numbered year. The superintendent may not accept any declaration of candidacy that is not on file in his or her office or not postmarked before the 16th day of October, or if not postmarked or the postmark is not legible, if received by mail after the 20th day of October of each even-numbered year.

(3) Each member of the regional committee shall be elected by a majority of the votes cast for all candidates for the position by the members of the boards of directors of school districts in the educational service district. All votes shall be cast by mail ballot addressed to the superintendent of the educational service district wherein the school director resides. No votes shall be accepted for counting if post-marked after the 16th day of November or if not postmarked or the postmark is not legible, if received by mail after the 21st day of November of each even-numbered year. An election board comprised of three persons appointed by the board of the educational service district shall count and tally the votes not later than the 25th day of November or the next business day if the 25th falls on a Saturday, Sunday, or legal holiday of each even-numbered year. Each vote cast by a school director shall be recorded as one vote. Within ten days following the count of votes, the educational service district superintendent shall certify to the superintendent of public instruction the name or names of the person(s) elected to be members of the regional committee.

(4) In the event of a change in the number of education-al service districts or in the number of educational service district board members pursuant to chapter 28A.310 RCW a new regional committee shall be elected for each affected educational service district at the next election conducted pursuant to this section. Those

persons who were serving on a regional committee within an educational service district affected by a change in the number of districts or board members shall continue to constitute the regional committee for the educational service district within which they are registered to vote until the majority of a new board has been elected and certified.

(5) No member of a regional committee shall continue to serve thereon if he or she ceases to be a registered voter of the educational service district board member district or if he or she is absent from three consecutive meetings of the committee without an excuse acceptable to the committee.

RCW 28A.315.135 Regional committees—Vacancies. In case of a vacancy from any cause on a regional committee, the remaining members of the commit-tee shall fill such vacancy by appointment pursuant to a majority vote of the remaining members: PROVIDED, That should there exist fewer members on a regional committee than constitutes a majority of the legally established commit-tee member positions, the educational service district board members of the district in which the committee is located, by the vote of a majority of the members in its legally established number of board member positions, shall appoint a sufficient number of committee members to constitute a legal majority on the committee. Appointees to fill vacancies shall meet the requirements provided by law for committee members and shall serve until the next regular election for members of regional committees at which time a successor shall be elected for the balance of the unexpired term.

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RCW 28A.315.145 Regional committees—Terms of members. The terms of members of the regional commit-tees shall be for four years and until their successors are certified as elected. For the 1994 election conducted pursuant to *RCW 28A.315.030 and the election of a new regional committee following a change in the number of educational service districts or board members, regional committee member positions one, three, five, seven, and nine shall be for a term of two years, positions two, four, six, and eight shall be for a term of four years.

RCW 28A.315.155 Regional committees—Members' expenses reimbursed. Members of each regional committee shall serve without compensation but shall be reimbursed for expenses necessarily incurred in the performance of their duties.

RCW 28A.315.165 Regional committees—Organization, meetings, quorum. Each regional committee shall organize by electing from its membership a chair and a vice chair. The educational service district superintendent shall be the secretary of the committee. Meetings of the committee shall be held upon call of the chair or of a majority of the members thereof. A majority of the commit-tee shall constitute a quorum.

RCW 28A.315.175 State board—Powers and duties. The powers and duties of the state board with respect to this chapter shall be:

(1) To aid regional committees in the performance of their duties by furnishing them with plans of procedure, standards, data, maps, forms, and other necessary materials and services essential to a study and

understanding of the problems of school district organization in their respective educational service districts.

(2) To hear appeals as provided in RCW 28A.315.205.

RCW 28A.315.185 Annual training. To the extent funds are appropriated, the superintendent of public instruction, in cooperation with the educational service districts and the Washington state school directors' association, shall conduct an annual training meeting for the regional commit-tees, state board members, educational service district superintendents, and local school district superintendents and boards of directors. Training may also be provided upon request.

RCW 28A.315.195 Transfer of territory by petition—Requirements—Rules—Costs. (1) A proposed change in school district organization by transfer of territory from one school district to another may be initiated by a petition in writing presented to the educational service district superintendent:

(a) Signed by at least fifty percent plus one of the registered voters residing in the territory proposed to be transferred; or

(b) Signed by a majority of the members of the board of directors of one of the districts affected by a proposed transfer of territory.

(2) The petition shall state the name and number of each district affected, describe the boundaries of the territory proposed to be transferred, and state the reasons

for desiring the change and the number of children of school age, if any, residing in the territory.

(3) The educational service district superintendent shall not complete any transfer of territory under this section that involves ten percent or more of the common school student population of the entire district from which the transfer is proposed, unless the educational service district superintendent has first called and held a special election of the voters of the entire school district from which the transfer of territory is proposed. The purpose of the election is to afford those voters an opportunity to approve or reject the proposed transfer. A simple majority shall determine approval or rejection.

(4) The state board may establish rules limiting the frequency of petitions that may be filed pertaining to territory included in whole or in part in a previous petition.

(5) Upon receipt of the petition, the educational service district superintendent shall notify in writing the affected districts that:

(a) Each school district board of directors, whether or not initiating a proposed transfer of territory, is required to enter into negotiations with the affected district or districts;

(b) In the case of a citizen-initiated petition, the affected districts must negotiate on the entire proposed transfer of territory;

(c) The districts have ninety calendar days in which to agree to the proposed transfer of territory;

(d) The districts may request and shall be granted by the educational service district superintendent one thirty-day extension to try to reach agreement; and

(e) Any district involved in the negotiations may at any time during the ninety-day period notify the educational service district superintendent in writing that agreement will not be possible.

(6) If the negotiating school boards cannot come to agreement about the proposed transfer of territory, the educational service district superintendent, if requested by the affected districts, shall appoint a mediator. The mediator has thirty days to work with the affected school districts to see if an agreement can be reached on the proposed transfer of territory.

(7) If the affected school districts cannot come to agreement about the proposed transfer of territory, and the districts do not request the services of a mediator or the mediator was unable to bring the districts to agreement, either district may file with the educational service district superintendent a written request for a hearing by the regional committee.

(8) If the affected school districts cannot come to agreement about the proposed transfer of territory initiated by citizen petition, and the districts do not request the services of a mediator or the mediator was unable to bring the districts to agreement, the district in which the citizens who filed the petition reside shall file with the educational service district superintendent a written request for a hearing by the regional committee, unless a majority of the citizen petitioners request otherwise.

(9) Upon receipt of a notice under subsection (7) or (8) of this section, the educational service district superintendent shall notify the chair of the regional committee in writing within ten days.

(10) Costs incurred by school districts under this section shall be reimbursed by the state from such funds as are appropriated for this purpose.

RCW 28A.315.205 Transfer of territory by petition—Regional committee responsibilities—Rules—Appeals. (1) The chair of the regional committee shall schedule a hearing on the proposed transfer of territory at a location in the educational service district within sixty calendar days of being notified under RCW 28A.315.195 (7) or (8).

(2) Within thirty calendar days of the hearing under subsection (1) of this section, or final hearing if more than one is held by the committee, the committee shall issue its written findings and decision to approve or disapprove the proposed transfer of territory. The educational service district superintendent shall transmit a copy of the committee's decision to the superintendents of the affected school districts within ten calendar days.

(3) In carrying out the purposes of RCW 28A.315.015 and in making decisions as authorized under RCW 28A.315.095(1), the regional committee shall base its judgment upon whether and to the extent the proposed change in school district organization complies with RCW 28A.315.015(2) and rules adopted by the state board under chapter 34.05 RCW.

(4) State board rules under subsection (3) of this section shall provide for giving consideration to all of the following:

(a) Student educational opportunities as measured by the percentage of students performing at each level of the state-wide mandated assessments and data regarding student attendance, graduation, and dropout rates;

(b) The safety and welfare of pupils. For the purposes of this subsection, "safety" means freedom or protection from danger, injury, or damage and "welfare" means a positive condition or influence regarding health, character, and well-being;

(c) The history and relationship of the property affected to the students and communities affected, including, for example, inclusion within a single school district, for school attendance and corresponding tax support purposes, of entire master planned communities that were or are to be developed pursuant to an integrated commercial and residential development plan with over one thousand dwelling units;

(d) Whether or not geographic accessibility warrants a favorable consideration of a recommended change in school district organization, including remoteness or isolation of places of residence and time required to travel to and from school; and

(e) All funding sources of the affected districts, equalization among school districts of the tax burden for general fund and capital purposes through a reduction in disparities in per pupil valuation when all funding sources

are considered, improvement in the economies in the administration and operation of schools, and the extent the proposed change would potentially reduce or increase the individual and aggregate transportation costs of the affected school districts.

(5)(a)(i) A petitioner or school district may appeal a decision by the regional committee to approve a change in school district organization to the state board based on the claim that the regional committee failed to follow the applicable statutory and regulatory procedures or acted in an arbitrary and capricious manner. Any such appeal shall be based on the record and the appeal must be filed within thirty days of the final decision of the regional committee.

(ii) If the state board finds that all applicable procedures were not followed or that the regional committee acted in an arbitrary and capricious manner, it shall refer the matter back to the regional committee with an explanation of the board's findings. The regional committee shall rehear the proposal.

(iii) If the state board finds that all applicable procedures were followed or that the regional committee did not act in an arbitrary and capricious manner, depending on the appeal, the educational service district shall be notified and directed to implement the changes.

(b) Any school district or citizen petitioner affected by a final decision of the regional committee may seek judicial review of the committee's decision in accordance with RCW 34.05.570.

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RCW 28A.315.215 Transfer of territory by agreement or order—Approval—Order. (1) Upon receipt by the educational service district superintendent of a written agreement by two or more school districts to the transfer of territory between the affected districts, the superintendent shall make an order establishing all approved changes involving the alteration of the boundaries of the affected districts. The order shall also establish all approved terms of the equitable adjustment of assets and liabilities involving the affected districts. The superintendent shall certify his or her action to each county auditor, each county treasurer, each county assessor, and the superintendents of all school districts affected by the action.

(2) Upon receipt by the educational service district superintendent of a written order by the regional committee approving the transfer of territory between two or more school districts, the superintendent shall make an order establishing all approved changes involving the alteration of the boundaries of the affected districts. The order may not be implemented before the period of appeal authorized under RCW 28A.315.205(5)(a)(i) has ended. The order shall also establish all approved terms of the equitable adjustment of assets and liabilities involving the affected districts. The superintendent shall certify his or her action to each county auditor, each county treasurer, each county assessor, and the superintendents of all school districts affected by the action.

RCW 28A.315.225 Dissolution and annexation of certain districts—Annexation of nondistrict property. In case any school district has an average enrollment of fewer than five kindergarten through eighth grade pupils during the preceding school year or has not

made a reasonable effort to maintain, during the preceding school year at least the minimum term of school required by law, the educational service district superintendent shall report that fact to the regional committee, which committee shall dissolve the school district and annex the territory thereof to some other district or districts. For the purposes of this section, in addition to any other finding, "reasonable effort" shall be deemed to mean the attempt to make up whatever days are short of the legal requirement by conducting of school classes on any days to include available holidays, though not to include Saturdays and Sundays, prior to June 15th of that year. School districts operating an extended school year program, most commonly implemented as a 45-15 plan, shall be deemed to be making a reasonable effort. In the event any school district has suffered any interruption in its normal school calendar due to a strike or other work stoppage or slowdown by any of its employees that district shall not be subject to this section. In case any territory is not a part of any school district, the educational service district superintendent shall present to the regional committee a proposal for the annexation of the territory to some contiguous district or districts.

RCW 28A.315.235 Consolidation—Petition. (1) A proposed change in school district organization by consolidation of territory from two or more school districts to form a new school district may be initiated by:

(a) A written petition presented to the educational service district superintendent signed by ten or more registered voters residing:

(i) In each whole district and in each part of a district proposed to be-included in any single new district; or

(ii) In the territory of a proposed new district that comprises a part of only one or more districts and approved by the boards of directors of the affected school districts;

(b) A written petition presented to the educational service district superintendent signed by ten percent or more of the registered voters residing in such affected areas or area without the approval of the boards of directors of the affected school districts.

(2) The petition shall state the name and number of each district involved in or affected by the proposal to form the new district and shall describe the boundaries of the pro-posed new district. No more than one petition for consolidation of the same two school districts or parts thereof shall be considered during a school fiscal year.

(3) The educational service district superintendent may not complete any consolidation of territory under this section unless he or she has first called and held a special election of the voters of the affected districts to afford those voters an opportunity to approve or reject the proposed consolidation. A simple majority shall determine approval or rejection.

(4) If a proposed change in school district organization by consolidation of territory has been approved under this section, the educational service district superintendent shall make- an order establishing all approved changes involving the alteration of the

boundaries of the affected districts. The order shall also establish all approved terms of the equitable adjustment of assets and liabilities involving the affected districts. The superintendent shall certify his or her action to each county auditor, each county treasurer, each county assessor, and the superintendents of all school districts affected by the action.

RCW 28A.315.245 Adjustment of assets and liabilities. In determining an equitable adjustment of assets and liabilities, the negotiating school districts and the regional committee shall consider the following factors:

(1) The number of school age children residing in each school district and in each part of a district involved or affected by the proposed change in school district organization;

(2) The assessed valuation of the property located in each school district and in each part of a district involved or affected by the proposed change in school district organization;

(3) The purpose for which the bonded indebtedness of any school district involved or affected by the proposed change in school district organization was incurred;

(4) The history and relationship of the property affected to the students and communities affected by the proposed change in school district organization;

(5) Additional burdens to the districts affected by the proposed change in school district organization as a result of the proposed organization;

(6) The value, location, and disposition of all improvements located in the school districts involved or affected by the proposed change in school district organization;

(7) The consideration of all other sources of funding; and

(8) Any other factors that in the judgment of the school districts or regional committee are important or essential to the making of an equitable adjustment of assets and liabilities.

RCW 28A.315.255 Adjustment of indebtedness. (1) The fact of the issuance of bonds by a school district, heretofore or hereafter, does not prevent changes in the organization and extent of school districts, regardless of whether or not such bonds or any part thereof are outstanding at the time of change.

(2) In case of any change:

(a) The bonded indebtedness outstanding against any school district involved in or affected by such change shall be adjusted equitably among the old school districts and the new district or districts, if any, involved or affected; and

(b) The property and other assets and the liabilities other than bonded indebtedness of any school district involved in or affected by any such change shall also be adjusted in the manner and to the effect provided

for in this section, except if all the territory of an old school district is included in a single new district or is annexed to a single existing district, in which event the title to the property and other assets and the liabilities other than bonded indebtedness of the old district vests in and becomes the assets and liabilities of the new district or of the existing district, as applicable.

RCW 28A.315.265 Adjustment of bonded indebtedness—Order-Special elections. If adjustments of bonded indebtedness are made between or among school districts in connection with the alteration of the boundaries of the school districts under this chapter, the order of the educational service district superintendent establishing the terms of adjustment of bonded indebtedness shall provide and specify:

(1) In every case where bonded indebtedness is transferred from one school district to another school district:

(a) That such bonded indebtedness is assumed by the school district to which it is transferred;

(b) That thereafter such bonded indebtedness shall be the obligation of the school district to which it is transferred;

(c) That, if the terms of adjustment so provide, any bonded indebtedness thereafter incurred by such transferee school district through the sale of bonds authorized before the date its boundaries were altered shall be the obligation of such school district including the territory added thereto; and

(d) That taxes shall be levied thereafter against the taxable property located within such school district as it is constituted after its boundaries were altered, the taxes to be levied at the times and in the amounts required to pay the principal of and the interest on the bonded indebtedness assumed or incurred, as the same become due and payable.

(2) In computing the debt limitation of any school district from which or to which bonded indebtedness has been transferred, the amount of transferred bonded indebtedness at any time outstanding:

(a) Shall be an offset against and deducted from the total bonded indebtedness, if any, of the school district from which the bonded indebtedness was transferred; and

(b) Shall be deemed to be bonded indebtedness solely of the transferee school district that assumed the indebtedness.

(3) In every case where adjustments of bonded indebtedness do not provide for transfer of bonded indebtedness from one school district to another school district:

(a) That the existing bonded indebtedness of each school district, the boundaries of which are altered and any bonded indebtedness incurred by each such school district thro[illegible]he sale of bonds authorized before the date its boundaries were altered is the obligation of the school district in its reduced or enlarged form, as the case may be; and

(b) That taxes shall be levied thereafter against the taxable property located within each such school district in its reduced or enlarged form, as the case may be, at the times and in the amounts required to pay the principal of and interest on such bonded indebtedness as the same become due and payable.

(4) If a change in school district organization approved by the regional committee concerns a proposal to form a new school district or a proposal for adjustment of bonded indebtedness involving an established school district and one or more former school districts now included therein pursuant to a vote of the people concerned, a special election of the voters residing within the territory of the proposed new district, or of the established district involved in a proposal for adjustment of bonded indebtedness as the case may be, shall be held for the purpose of affording those voters an opportunity to approve or reject such proposals as concern or affect them.

(5) In a case involving both the question of the formation of a new school district and the question of adjustment of bonded indebtedness, the questions may be submitted to the voters either in the form of a single proposition or as separate propositions, whichever seems expedient to the educational service district superintendent. When the regional committee has passed appropriate resolutions for the questions to be submitted and the educational service district superintendent has given notice thereof to the county auditor, the special election shall be called and conducted, and the returns canvassed as in regular school district elections.

RCW 28A.315.275 Notice of elections. Notice of special elections as provided for in RCW 28A.315.265

shall be given by the county auditor as provided in RCW 29.27.080. The notice of election shall state the purpose for which the election has been called and contain a description of the boundaries of the proposed new district and a statement of any terms of adjustment of bonded indebtedness on which to be voted.

RCW 28A.315.285 Special election—Determination—Order—Certification. (1) If a special election is held to vote on a proposal or alternate proposals to form a new school district, the votes cast by the registered voters in each component district shall be tabulated separately. Any such proposition shall be considered approved only if it receives a majority of the votes cast in each separate district voting thereon.

(2) If a special election is held to vote on a proposal for adjustment of bonded indebtedness, the entire vote cast by the registered voters of the proposed new district or of the established district as the case may be shall be tabulated. Any such proposition shall be considered approved if sixty percent or more of all votes cast thereon are in the affirmative.

(3) In the event of approval of a proposition or propositions voted on at a special election, the educational service district superintendent shall:

(a) Make an order establishing such new school district or such terms of adjustment of bonded indebtedness or both, as were approved by the registered voters and shall also order such other terms of adjustment, if there are any, of property and other assets and of liabilities other than bonded indebtedness as have been approved by the state council; and

(b) Certify his or her action to the county and school district officials specified in RCW 28A.315.215. The educational service district superintendent may designate, with the approval of the superintendent of public instruction, a name and number different from that of any component thereof, but must designate the new district by name and number different from any other district in existence in the county.

(4) The educational service district superintendent shall fix as the effective date of any order or orders he or she is required to make by this chapter, the date specified in the order of final approval of any change in the organization and extent of school districts or of any terms of adjustment of the assets and liabilities of school districts subject, for taxing purposes, to the redrawing of taxing district boundaries under RCW 84.09.030, by the regional committee.

(5) Upon receipt of certification under this section, the superintendent of each school district that is included in the new district shall deliver to the superintendent of the new school district those books, papers, documents, records, and other materials pertaining to the territory transferred.

RCW 28A.315.295 Rejection of proposal. If a proposal for the formation of a new school district and for adjustment of bonded indebtedness, or either, is rejected by the registered voters at a special election, the matter is terminated.

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RCW 28A.315.305 School district organizational changes—Corporate existence—Payment of bonded indebtedness—Levy authority. (1) Each school district involved in or affected by any change made in the organization and extent of school districts under this chapter retains its corporate existence insofar as is necessary for the purpose, until the bonded indebtedness outstanding against it on and after the effective date of the change has been paid in full. This section may not be construed to prevent, after the effective date of the change, such adjustments of bonded indebtedness as are provided for in this chapter.

(2) The county legislative authority shall provide, by appropriate levies on the taxable property of each school district, for the payment of the bonded indebtedness out-standing against it after any of the changes or adjustments under this chapter have been effected.

(3) In case any such changes or adjustments involve a joint school district, the tax levy for the payment of any bonded indebtedness outstanding against the joint district, after the changes or adjustments are effected, shall be made and the proceeds thereof shall be transmitted, credited, and paid out in conformity with the provisions of law applicable to the payment of the bonded indebtedness of joint school districts.

RCW 28A.315.315 Appeal. An appeal may be taken, as provided for in RCW 28A.645.010, to the superior court of the county in which a school district or any part thereof is situated on any question of adjustment of property and other assets and of liabilities provided for in this chapter. If the court finds the terms of the

adjustment in question not equitable, the court shall make an adjustment that is equitable.

RCW 28A.315.901 Part headings and captions not law—1999 c 315. Part headings and section captions used in this act are not any part of the law.